IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.636/2005

Ram Chandra Mali (deceased) through his L.Rs.
Kalyan Sahai & Others
...defendant-appellants
Versus
Jagdish Narayan S/o Shri Harinarayan
...plaintiff-respondent

Date of Order ::: 17.11.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri A.K. Bhandari, Senior Advocate, with
Shri R.C. Sharma and
Shri Kinshuk Jain, Counsel for defendant-appellants
Shri S.C. Gupta, Counsel for plaintiff-respondent
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By the Court:-

Heard learned counsel for both the parties and with the consent of both the parties the second appeal is being disposed of at this stage itself.

Following substantial question of law is involved in this second appeal:-

> Whether the learned first appellate court has committed an error of law in not considering the question of partial eviction looking to the size of the shop as well as need of the plaintiff?

The learned counsel for both the parties have

not disputed that although the issue no.6 was framed by the lower court in respect of partial eviction but no evidence was led by both the parties on this issue. The learned lower court did not record any finding on issue no.6 on the ground that the plaintiff failed to prove the personal bona-fide necessity of the rented shop. So far as the first appellate court is concerned, the issue no.6 was neither referred nor considered in its judgment.

In these circumstances the question formulated above is decided in favour of the appellants and it is held that the first appellate court has committed an error of law in not considering the question of partial eviction in the facts and circumstances of the present case.

Consequently, the second appeal is allowed. The judgment and decree dated 16.9.2005 passed by the Additional District Judge No.2, Jaipur City, Jaipur in Civil Regular Appeal No.24/2004 is set aside. The case is remitted back to the Court of Additional District Judge No.2, Jaipur City, Jaipur, who is directed to record evidence of both the parties on issue no.6 relating to partial eviction and to decide the appeal filed by the plaintiff before it, afresh, after hearing both the parties.

The registry is directed to send back the

record of both the courts below to the first appellate court immediately. Both the parties are directed to appear before the Additional District Judge No.2, Jaipur City, Jaipur, on 7th of December, 2006, and the said court is directed to record the evidence on issue no.6 and decide the appeal finally within a period of four months from 7th of December, 2006.

There shall be no order as to costs.

(Narendra Kumar Jain) J.

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